

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ITOFFEE R. GAYLE

Write the full name of each plaintiff.

-against-

DAVID S. ALLEE

MORGAN LEHMAN GALLERY

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

18CV3774

(Include case number if one has been assigned)

COMPLAINT

Do you want a jury trial?

☐ Yes ☐ No

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

☒ **Federal Question**

☐ **Diversity of Citizenship**

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

- i) FEDERAL TRADEMARK INFRINGEMENT UNDER 15 U.S.C.
- ii) FEDERAL UNFAIR COMPETITION UNDER 15 U.S.C.
- iii) COPYRIGHT INFRINGEMENTS
- iv) STATUTORY DAMAGES UNDER 17 USC § 504

B. If you checked Diversity of Citizenship**1. Citizenship of the parties**

Of what State is each party a citizen?

The plaintiff, ITOFFEE R. GAYLE, is a citizen of the State of
(Plaintiff's name)

NEW YORK
(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, DAVID S. ALLEE, is a citizen of the State of
(Defendant's name)

NEW YORK

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If the defendant is a corporation:

The defendant, MORGAN LEHMAN GALLERY, is incorporated under the laws of
the State of NEW YORK

and has its principal place of business in the State of NEW YORK

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in NEW YORK

If more than one defendant is named in the complaint, attach additional pages providing information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

<u>ITOFFEE</u>	<u>R.</u>	<u>GAYLE</u>
First Name	Middle Initial	Last Name
<u>290 POWELL AVE. APT. 2F</u>		
Street Address		
<u>BRONX</u>	<u>NY</u>	<u>10472</u>
County, City	State	Zip Code
<u>917 952 5661</u>	<u>ITOFFEEGAYLE@YAHOO.COM</u>	
Telephone Number	Email Address (if available)	

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1: DAVID S. ALLEE
 First Name Last Name
ARTIST/PHOTOGRAPHER
 Current Job Title (or other identifying information)
534 W 24th STREET
 Current Work Address (or other address where defendant may be served)
NEW YORK, NY 10011
 County, City State Zip Code

Defendant 2: MORGAN LEHMAN GALLERY
 First Name Last Name
REPRESENTING GALLERY FOR DAVID ALLEE.
 Current Job Title (or other identifying information)
534 W 24th ST
 Current Work Address (or other address where defendant may be served)
NEW YORK NY 10011
 County, City State Zip Code

Defendant 3: _____
 First Name Last Name

 Current Job Title (or other identifying information)

 Current Work Address (or other address where defendant may be served)

 County, City State Zip Code

Defendant 4:

First Name

Last Name

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City

State

Zip Code

III. STATEMENT OF CLAIM

Place(s) of occurrence:

NEW YORK CITY, NY

Date(s) of occurrence:

2016

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

1. THE DEFENDANT, DAVID S. ALLEE USED THE TRADEMARK "ART WE ALL" REGISTRATION 5108721 ALONG WITH THE ORIGINAL WORKS OF ART OF THE COPYRIGHT REGISTRATIONS VA 20069158 & VA 2088822, IN AN EXHIBITION TITLED "CHASING FIREFLY" AT THE MORGAN LEHMAN GALLERY FROM 01/05/2017 TO 02/11/2017 WITHOUT PERMISSION, COMPENSATION, OR ATTRIBUTION TO THE PLAINTIFF.
2. THE PLAINTIFF, ITOFFEE R. GAYLE HOLDS A VALID TRADEMARK FOR "ART WE ALL" ENTITLED TO PROTECTION. "ART WE ALL" IS A REGISTERED TRADEMARK UNDER THE CATEGORY OF PROVIDING RETAIL SERVICES INCLUDING WORKS

OF ART, REGISTRATION 5108721. THE DEFENDANT,
DAVID S. ALLEE AND REPRESENTING GALLERY
HAVE EXPLOITED & CAPITALIZED OFF THE
PLAINTIFF'S "ART WE ALL" BRAND NAME
RECOGNITION.

3. FORMER ATTORNEY OF PLAINTIFF, LAURIE MARSHALL,
SUBMITTED A CEASE & DESIST LETTER ON
4/23/2017. THE DEFENDANT, DAVID S. ALLEE
HAS YET TO RESPOND OR ACKNOWLEDGE
RECEIPT OF SAID LETTER.

4. THE UNAUTHORIZED USE OF PLAINTIFF'S
TRADEMARK & WORK OF ART OR DERIVATIONS
OF PLAINTIFF'S COPYRIGHT REGISTRATIONS IN
DEFENDANT'S EXHIBITION WITHOUT PERMISSION,
CONSENT, COMPENSATION OR ATTRIBUTION CONSTITUTES
(AS DESCRIBED BY PLAINTIFF'S FORMER
COUNSEL)

i) FEDERAL TRADEMARK INFRINGEMENT UNDER
15 U.S.C §1114(a)

ii) FEDERAL UNFAIR COMPETITION UNDER
15 U.S.C § 1125(a)

iii) UNFAIR COMPETITION & TRADEMARK INFRINGEMENT
UNDER RELATED STATE LAWS.

iv) COPYRIGHT INFRINGEMENTS

v) STATUTORY DAMAGES UNDER 17 USC [§] 2504

THE PLAINTIFF, ITUPPEE R. GAYLE WILL REQUIRE
AN APPROPRIATE MONETARY PAYMENT OF
\$75,000 TO COMPENSATE FOR THE DAMAGES
CAUSED AS A RESULT OF SAID VIOLATIONS.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.


THE PLAINTIFF, ITUPPEE R. GAYLE WILL
REQUIRE AN APPROPRIATE MONETARY PAYMENT
OF \$75,000 TO COMPENSATE FOR THE
DAMAGES CAUSED AS A RESULT OF SAID
VIOLATIONS.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

<u>4/27/18</u>		<u></u>	
Dated		Plaintiff's Signature	
<u>ITOFFEE</u>	<u>R.</u>	<u>GAYLE</u>	
First Name	Middle Initial	Last Name	
<u>2010 POWELL AVE APT. 2F</u>			
Street Address			
<u>BRONX</u>	<u>NEW YORK</u>	<u>10472</u>	
County, City	State	Zip Code	
<u>917 952 5661</u>	<u>ITOFFEE GAYLE @YAHOO.COM</u>		
Telephone Number	Email Address (if available)		

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

☐ Yes ☐ No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.

ARTWEALL NYC

V.

DAVID S. ALEE

David S. Allee

David S. Allee, pro photographer, has exhibited a photograph of Art we All NYC artwork in solo exhibition, Chasing Firefly, at **Morgan Lehman Gallery** on 01/05/17 - 02/11/17 without consent

CONTACT INFO

David S. Allee
Ph 917 923 9774
Email contact@davidallee.com

Morgan Lehman Gallery
Ph 212 268 6699
534 W 24th St, New York, NY 10011
Email jay@morganlehmangallery.com, sally@morganlehmangallery.com

www.morganlhmangallery.com/exhibitions/david-s-allee4?view=slider#7

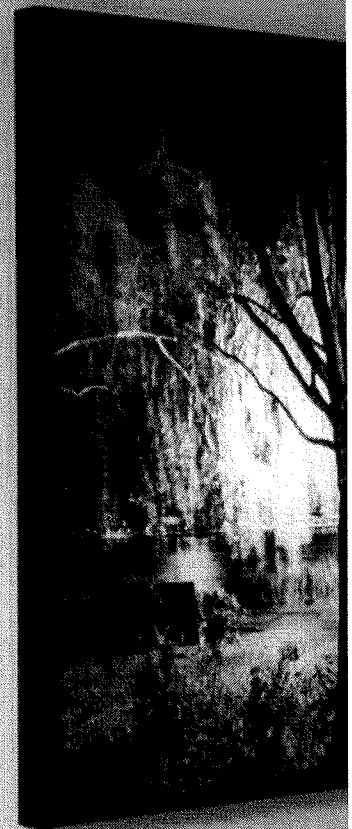


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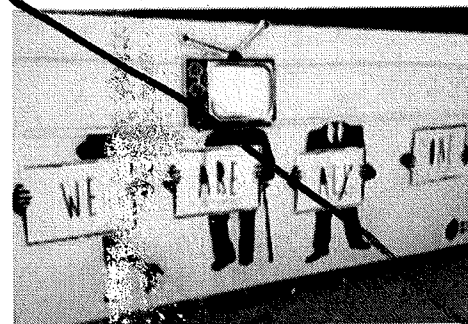
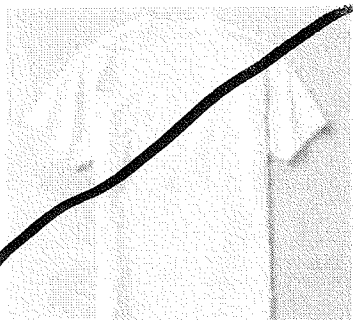
Art We All One, 2016 © David Allee, courtesy Morgan Lehman Gallery.

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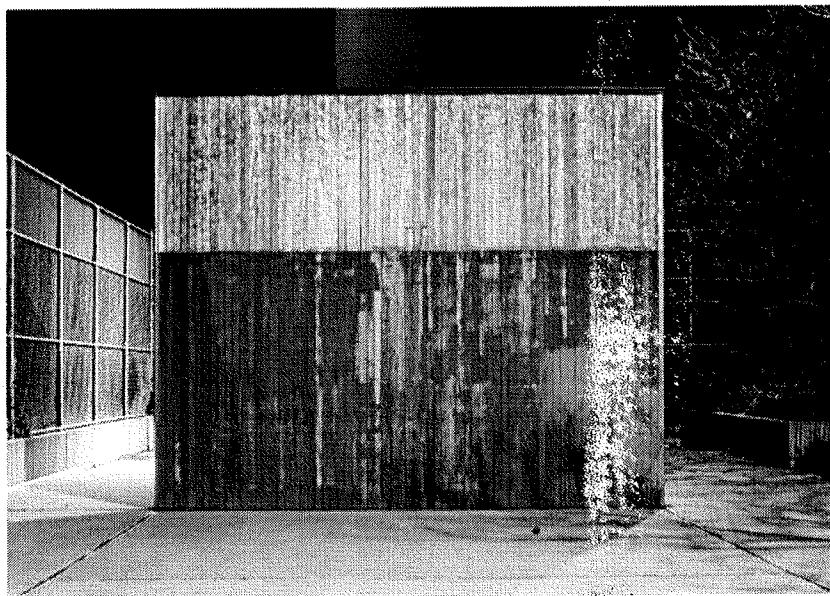
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©David S. Allee, Art We All One, 2016 Dye sublimation metal print 45 x 48 in, Courtesy of Morgan Lehman



©David S. Allee, Ball Court, 2016 Dye sublimation metal print 45 x 60 in, Courtesy of Morgan Lehman



bowties38
Morgan Lehman Gallery

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JANUARY 21



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